IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-3-2002

CORAM:

THE HON'BLE MR. JUSTICE K. SAMPATH

W.P.NO.21366 Of 2001 and W.M.P.No.31550 of 2001 and W.V.M.P.No.100 of 2002

P. Periasamy,
S/o Ponnusamy,
114, St. Joseph Nagar,
Kondur,
Cuddalore 607 001. ... Petitioner

Vs.

The General Manager
(Operation),
Tamil Nadu State Transport
Corporation,
Villupuram (Division-I) Ltd.,
Villupuram 605 602. ... Respondent

For Petitioner: ... Mr.S. Balasubramanian
For Respondent: ... Mr.S. Jayaraman

This writ petition is filed under Article 226 of the Constitution for the issue of a certiorarified mandamus to call for the records of the respondent in his proceedings Ka.Ku.No.1047/1929/TS/TNSTC/2001, quash his notice dated 24.10.2001 and direct the respondent to take disciplinary action against the petitioner for the charges levelled against him by the respondent pursuant to his notice dated 21-6-2001 after conducting fresh enquiry against him.

: ORDER
By consent the main writ petition itself was taken up and arguments heard.

2.The facts leading to the filing of the writ petition may be summarised as follows:
The writ petitioner was working as a Conductor in the respondent Depot at Cuddalore. Alleging misconduct of misappropriation as found by the Auditing Committee, charge sheet was issued to the petitioner on 21.6.2001. The charges in main were that: when he was performing duty in route No.310-G service between Cuddalore and Trichy, apart from taking the regular ticket book for that route, he had also taken the ticket books of some

other route and also the invoices; he had corrected the ticket book and invoice of the other route whenever the Checking Inspector inspected, so that they tallied with the actual collection, which he remitted to the office; he had also suppressed the amount collected on the issuance of ticket book relating to such other route and misappropriated the same; he also forged the signatures of drivers, who were working with him, as for example, on 9.10.2000 and 19-10-2000 he misappropriated huge sums of money. It was found that the petitioner during the period 1-4-1999 to 30-11-2000 had suppressed and did not bring into account 114 invoices and 36963 tickets. The value of the amount thus misappropriated by the writ petitioner would come to Rs.14,23,000/-. The petitioner was charged under clauses 20(4), 34 and 37-A of the Certified Standing Orders of the Corporation. The petitioner was directed to submit his explanation within seven days. After a good passage of time, he submitted his reply on 24-7-2001 denying the charges. The Corporation was not satisfied with the explanation offered and ordered a domestic enquiry. A notice of enquiry dated 6-8-2001 was sent to the petitioner intimating that one Mr.T. Rangarajan, Retired Judge, had been appointed as Enquiry Officer. The enquiry was to take place on 16-8-2001 at the Villupuram Head Office at 10 a.m. The petitioner wrote a letter on 11-8-2001 insisting that the enquiry should be held in some depot other than Villupuram Depot and wanted the Enquiry Officer to be changed. The enquiry was adjourned to 10-9-2001. The petitioner, instead of attending the domestic enquiry, sent a telegram to the Corporation that he would not attend the enquiry since the Enquiry Officer and the venue of the enquiry had not been changed as per his request. As he had refused to attend the enquiry, the Enquiry Officer setting him exparte, proceeded with the enquiry. The Management examined two witnesses on its side. The Enquiry Officer came to the conclusion that the charges levelled against the petitioner were found proved. The Corporation concurred with the findings of the Enquiry Officer and having regard to the seriousness and gravity of the misconduct and the loss caused to the Corporation and on a perusal of his past record , the Corporation proposed to remove him from service. The petitioner was directed to submit his reply to the second show cause notice within seven days from the date of receipt of the notice. He took time twice for submitting his reply and without submitting any reply, he moved this Court on 7-11-2001 and obtained an order of status quo.

3.The main contention of Mr.S. Balasubramanian, learned Counsel for the petitioner, is that the Enquiry Officer, who had conducted enquiry for the Corporation, had always held in favour of the Corporation and against the interest of the employees and that the petitioner was therefore, justified in seeking change of Enquiry Officer, that though the respondent Corporation conceded the demand of the petitioner with regard to change of venue, it was not justified in refusing to change the Enquiry Officer. According to the petitioner, the Enquiry Officer would be biased against him. The learned Counsel also relied on a judgment of a Bench of the Orissa High Court reported in HAREKRISHNA DAS VS. UNION OF INDIA AND OTHERS (1993(I) LLJ 20) in support of his contention that when a person expresses apprehension about the impartiality of an Enquiry Officer, that would be a sufficient ground for changing the Enquiry Officer.

4. Per contra, Mr.S. Jayaraman, learned Counsel for the

respondent Corporation, vehemently submitted that there was absolutely no justification on the part of the writ petitioner to have avoided the enquiry and stayed away. No bias at all could be attributed to the Enquiry Officer and the same had not been substantiated by the petitioner. The learned Counsel further submitted that even assuming without conceding that the Enquiry Officer had entered a wrong finding, it would always be open to the petitioner to go before the Labour Court and it would be for the Labour Court to satisfy itself about the manner in which the domestic enquiry had been conducted, whether it was vitiated and whether there was lack of evidence, in which event it would be open to the employer to lead independent evidence before the Labour Court and court a decision. According to the learned Counsel, the writ petition was totally misconceived and no case had been made out for interference. The learned Counsel further submitted that this was a case where lakhs of rupees had been found to have been misappropriated by the petitioner and the petitioner knowing fully well that he did not stand a chance, had been only stalling the proceedings and he should not be allowed to get away with it.

5. No doubt, there is substance in what the learned Counsel for the respondent submitted. But then it is an exparte order and in the circumstances, I am of the view that an opportunity can be afforded to the petitioner to have a decision on merits, but then not with a change of the Enquiry Officer. Absolutely no case is made out for holding that the Enquiry Officer is biased. The decision relied on by the learned Counsel for the petitioner has held that a request for change of inquiring authority is to be decided not from the point of view of the disciplinary authority, but from the angle of the employee concerned and that it is not necessary that bias must be actually present in the inquiring authority, but it is sufficient if there is reasonable apprehension regarding impartiality of the inquiring authority. However, the decision cautions that mere fanciful or imaginary claim of bias would not sustain the plea for change of inquiring authority. The test is as to whether a man of reasonable prudence, if placed in the similar circumstances as that of the employee, would have thought the inquiring authority to be biased against him. On facts the Bench of the Orissa High Court found that there was no way of developing a reasonable apprehension of bias in the inquiring authority, since he never acted contrary to the interest of the petitioner. In that case, a few documents were sought to be exhibited by the petitioner, but those were documents, which were non-existent and the inquiring authority explained it to the delinquent officer that those were not available and the preliminary inquiry repor t which was not a document to be inspected was not shown to him and it could not therefore be said that a reasonable man would have been threatened with apprehension of bias in mind. The Bench pointed out that it was on the other hand as if the petitioner had the single objective of avoiding the inquiry and there was as such no justification for the demand for the change of the inquiring authority.

6.The decision relied on by the learned Counsel for the petitioner does not really support the case of the petitioner. Even before the enquiry started, the petitioner sought change of venue and the Enquiry Officer and absolutely no tenable objection had been raised by him against the Enquiry Officer. Some statement had been made that in the previous enquiries

he had favoured the Management, that he had not allowed the delinquents to cross -examine the witnesses on the side of the Management. No specific instance of any such behaviour on the part of the Enquiry Officer has been mentioned anywhere. I am satisfied that the contention on the part of the petitioner to ask for change of Enquiry Officer on the ground of bias cannot at all be sustained. The attempt has been only to stall the proceedings. The misconduct attributed to the petitioner is very grave. The Enquiry Officer, I am aware, has had a clean record in the judiciary and no bias can be attributed to him.

7.In sum, while setting aside the report on the basis of exparte enquiry and the consequent second show cause notice, I direct a fresh enquiry to be conducted in which the petitioner will participate without any objection and without indulging in delaying tactics. The enquiry shall be completed within a period of three months from the date of receipt or production of a copy of the order in the writ petition. The petitioner shall co-operate as also the Management for completing the enquiry within the stipulated time. No unjustified adjournments shall be allowed by the Enquiry Officer. The writ petition is disposed of on the above terms. The stay petition in W.M.P.No.31550/200 1 and the vacate stay petition in M.V.M.P.No.100/2002 are closed. There will be no order as to costs.

15-3-2002
Index: Yes
IGP

TO
The General Manager
(Operation),
Tamil Nadu State Transport
Corporation,
Villupuram (Division-I) Ltd.,
Villupuram 605 602.

K. SAMPATH, J.
W.P.NO.21366 of 2001
and
W.M.P.No.31550/2001 &
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